UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/WG.13/2
21 June 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended Working Group
on a draft optional protocol to the
Convention on the Rights of the
Child on involvement of children
in armed conflicts
First session
31 October-11 November 1994

COMMENTS ON THE PRELIMINARY DRAFT OPTIONAL PROTOCOL

Report of the Secretary-General

1. In paragraph 13 of its resolution 1994/91, the Commission on Human Rights decided to establish an open-ended inter-sessional working group of the Commission to elaborate, as a matter of priority, a draft optional protocol to the Convention on the Rights of the Child, using as one basis for its discussions the preliminary draft optional protocol on involvement of children in armed conflicts (E/CN.4/1994/91, annex) submitted by the Committee on the Rights of the Child.

2. In paragraph 16 of the resolution, the Commission requested the Secretary-General to invite Governments, intergovernmental organizations, the Committee on the Rights of the Child and the expert on the situation of children in armed conflicts, to be appointed by the Secretary-General pursuant to General Assembly resolution 48/157, as well as non-governmental organizations, to send comments on the preliminary draft optional protocol, for consideration by the working group, and to circulate these contributions to Governments in advance of the meeting of the working group.

3. Pursuant to that resolution, the Secretary-General, on 7 June 1994, addressed requests to Governments and intergovernmental and non-governmental organizations concerned for comments on the preliminary draft optional protocol.

GE.94-13063 (E)

4. By a letter dated 28 April 1994, addressed to the Assistant Secretary-General for Human Rights, the Chairperson of the Committee on the Rights of the Child transmitted the comments which the Committee had made on the preliminary draft optional protocol on involvement of children in armed conflicts for consideration by the working group established by the Commission on Human Rights for this purpose. The text of the comments is reproduced below.

5. Any additional comments received will be issued as addenda to the present report.

COMMITTEE ON THE RIGHTS OF THE CHILD

[Original: English]
[28 April 1994]

The Committee on the Rights of the Child adopted, at its sixth (special) session, on 22 April 1994, recommendation 2.1 "Children in armed conflicts" (CRC/C/29), in which it decided to prepare its comments in the light of the thematic general discussion it held at its second session.

Article 38 of the Convention on the Rights of the Child has two paragraphs in relation to the age of children who may be recruited into armed forces or take a direct part in hostilities; paragraph 2 provides for all feasible measures to be taken by States parties to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities; paragraph 3 establishes that States parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces.

The Convention defines all human beings below the age of 18 years as being children. The involvement of children in military activities below the age of 18 seems to be in contradiction with the basic principles of the Convention - the best interests of the child (art. 3) and the right to life and survival of the child (art. 6).

The notion of "direct participation in hostilities" does not exclude indirect participation of children below the age of 15 in hostilities.

Already at its first session the Committee decided to devote a day of its second session to the consideration of the topic "Children in armed conflicts". One of the concerns raised at that stage was the need to prevent children from taking direct or indirect part in hostilities.

During its second session the Committee discussed the above-mentioned topic and agreed, inter alia, on several issues related to the age limits established in article 38 of the Convention. It was recalled that States parties to the Convention agreed to respect and ensure all rights set forth in the Convention to all children within their jurisdiction (art. 2).

It is evident that under article 38, children over 15 years of age are discriminated against in relation to the right to life and survival. The latter provision does not admit a derogation in time of war or emergency.

At the second session of the Committee, attention was also drawn to the fact that in the light of article 41, States parties may make (and in fact several already have made), declarations when ratifying or acceding to the Convention on applying more conducive standards than those contained in the Convention, namely on not recruiting children under 18 years of age into the armed forces.

One of the possible actions recommended was the need to improve the existing international standards. At its second session, the Committee decided, among other follow-up measures, to consider a preliminary draft optional protocol to the Convention raising the age of recruitment of children into the armed forces to 18 years. At its third session that preliminary draft optional protocol was drawn up and later transmitted to the Commission on Human Rights at its fiftieth session, following a special appeal made by the World Conference on Human Rights.

The relevant chapters of the Committee reports on this issue will also be made available to the Working Group of the Commission on Human Rights.